

Appl. No. 09/787,452
Atty. Docket No. 7628
Amdt. dated 05/14/2003
Reply to Office Action of 12/05/2002

REMARKS/ARGUMENTS

Claims 2, 11 and 13-18 have been cancelled as being superfluous in view of the amendments to Claim 1.

Claims 1, 3-10 and 12 are now in the case.

As noted by the Examiner, the transcribing errors in Claims 4, 7 and 10 have been corrected.

As further noted by the Examiner with regard to 35 USC §112, the following amendments have been made;

- (i.) The "selected detergent ingredient" terminology has been replaced by the term -- surfactant --. Basis is at page 3, line 19.
- (ii.) The "area" terminology has been replaced by the term -- volume --. Basis is at page 3, lines 15-18.

Claim 1 has been further amended to recite the circularity, aspect ratio and product of the circularity and aspect ratio. Basis is at page 8, penultimate paragraph, through page 9, paragraph 3.

It is submitted that all amendments are fully supported and entry is requested.

Objections to Claims

It is submitted that the foregoing amendments meet all objections to the claims, per page 2 of the Office Action. Withdrawal of the objections is requested.

Rejection Under 35 USC 112

It is submitted that the foregoing amendments and the cancellation of Claim 13 meet all rejections under §112, per page 2 of the Office Action. Withdrawal of the rejections is requested.

Rejection Under 35 USC 102/103

Claims 1, 2, 4, 6-7 and 9-14 stand rejected under §102 or §103 over WO 98/35004 ("WO/004") for reasons of record at pages 3-4 of the Office Action.

Claims 1, 2, 4, 6, 7, 9-14, 17 and 18 stand rejected under §102 or §103 over U.S. 5,569,645 ("645") for reasons of record at pages 4-5 of the Office Action.

Claims 3, 5, 8, 15 and 16 stand rejected under §103 over '645, for reasons of record at pages 5-6 of the Office Action.

Appl. No. 09/787,452
Atty. Docket No. 7628
Amdt. dated 05/14/2003
Reply to Office Action of 12/05/2002

Applicants respectfully traverse all rejections, to the extent they may apply to the claims as amended herewith.

Before turning to the substance of the rejections, it may be useful to summarize the present invention, as reflected in the amended claims presented herewith.

As discussed at page 2, Applicants herein are concerned with the problem of the formation of undesirable "clumps" which can occur when granular detergents are first contacted by water in a washing machine. Applicants have addressed this problem by means of detergent granules which are characterized by: (1) their homogeneity number (page 3); (2) their circularity (page 8); (3) their aspect ratio (page 9); and (4) the product of their circularity and aspect ratio (page 9). In subsidiary claims, the granules are further characterized by their size.

As can be seen from the foregoing, and as explained in detail at pages 8-9 of the specification, the compositions herein address the "clumping" problem by a combination of granule geometry and homogeneity number.

Turning to the WO/004 document, one finds the disclosure of the use of certain polyamine cationics to improve the dispensing characteristics of solid detergents. (Page 2) While particle size is discussed at page 48, no disclosure or suggestion of particle geometry (i.e., circularity, aspect ratio, etc.) nor homogeneity requirements is found therein.

With regard to '645, one finds that the patentees employ an "optimum proportion" (col. 3, l. 32) of spray dried granules and agglomerates to improve the flow properties of granular detergents. While particle size is disclosed (col. 17, l. 40), geometry and homogeneity parameters are not.

In short, it is submitted that patentees in the cited documents have each taken an entirely different approach to the problems associated with granular detergents than did the Applicants herein.

The Examiner has taken the position that the present compositions would inherently flow from the precesses of the cited patents. It is respectfully submitted that this goes beyond the bounds of MPEP 2112 and 2131.02 Section III, in that no basis in fact has been established to support a conclusion of inherency. This would appear to be especially true when, as here, the cited patents teach entirely different solutions to the detergent problem than that of the present claims.

In short, it is submitted that there must be some evidence that a characteristic not disclosed in the cited patents is inherent. It is respectfully submitted that no such evidence exists with regard to the amended claims herein.

Appl. No. 09/787,452
Attr. Docket No. 7628
Amdt. dated 05/14/2003
Reply to Office Action of 12/05/2002

CONTROLLING CASE LAW

For the record, it is submitted that the case law cited by the Examiner is inapposite, in view of the foregoing amendments and remarks. However, some brief comments in rebuttal are presented for the record.

With regard to the comments on "optimization results", the Examiner's attention is directed to *In re Antonie*, 559 F. 2d 618, 195 USPQ 6 (CCPA 1977) for the proposition that it may be non-obvious to discover a result-effective parameter.

In special regard to the *Aller* case cited by the Examiner, quite interesting is a footnote in *In re Yates*, 663 F. 2d 1054, 211USPQ 1149 at 1151 (CCPA 1981) chiding the solicitor:

The solicitor, relying upon *In re Aller*, 220 F. 2d 454, 105 USPQ 233 (1955), argues that it is 'not unobvious to discover optimum or workable ranges by routine experimentation.' In many instances this may be true. The problem, however, with such 'rules of patentability' (and the ever lengthening list of exceptions which they engender) is that they tend to becloud the ultimate legal issue - obviousness - and exact the formal exercise of squeezing new factual situations into pre-established pigeonholes. Additionally, the emphasis upon routine experimentation is contrary to the last sentence of § 103.
[emphasis supplied]

In light of the above amendments and remarks, it is requested that the Examiner reconsider and withdraw all rejections. Early and favorable action in the case is respectfully requested.

MAY-14-2003 12:45

P&G PATENT


5136270260 P.10/10

Appl. No. 09/787,452
Atty. Docket No. 7628
Amdt. dated 05/14/2003
Reply to Office Action of 12/05/2002

FAX RECEIVED
MAY 15 2003
GROUP 1700

Respectfully submitted,
Capeci et al.

By


Jerry J. Yentey
Attorney for Applicant(s)
Registration No. 26,598
(513) 627-1907

May 14, 2003
Customer No. 27752

Page 7 of 7